The

BAR ASSOCIATION BULLETIN

Entered as second-class matter, April 13, 1926, at the Postoffice at Los Angeles, California, under the Act of March 3, 1879

Volume 5, Number 4 DECEMBER 19, 1929 10c a copy $1 a year

Official Publication of the Los Angeles Bar Association, Los Angeles, Cal.

In This Issue

BAR ASSOCIATION CHRISTMAS FANTASY

Thursday, December 19, 1929

See Page 117 for Particulars

Printed by PARKER, STONE & BAIRD COMPANY
Law Printers and Engravers
241 East Fourth Street Los Angeles, California

The BAR ASSOCIATION BULLETIN

VOL. 5 DECEMBER 19, 1929 No. 4

Published the third Thursday of each month by the Los Angeles Bar Association and devoted to the interests of the Association.

HOWELL PURDUE, *Editor*

Bulletin Office: 821 Title Insurance Bldg., Los Angeles. Telephone TUcker 4171.

LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

Secretary's Office: 1126 Rowan Bldg., Los Angeles. Telephone VAndike 5701

MEMBERS ARE REQUESTED TO PATRONIZE THE BULLETIN'S ADVERTISERS

Points to be Kept in Mind in Forming Corporations Under Amendments of 1929**

By REUEL L. OLSON *of the Los Angeles Bar.**

County where Principal Office Is to be Located. The articles of incorporation shall state: "the county in this state where the principal office for the transaction of the business of the corporation is to be located." (Civ. Code sec. 290, subd. 3.)

The amendment calls only for the *county* where the *principal office* is to be located. The residence of the corporation is the county where, by its articles, it has its principal office. *The exact language of the present statutes, as nearly as possible, should be used in all forms.*

Term of Existence. No statement as to the term of existence should be included in the articles, as Civil Code section 296 now provides for indeterminate existence until dissolution, voluntary or involuntary. It is reported that the secretary of state has refused to file articles which provide for a definite period of existence for a corporation, as this violates both the letter and the policy of the present law. If a corporation is organized with some limited purpose it is for the shareholders or members to decide when the time has arrived and when the corporate affairs are to be liquidated.

Amendment to Constitution Required before Par Value Shares and Shares without Par Value Can be Combined. Former section 290, subdivision 6, is amended by 290, subdivision 4, to provide for the authorization of shares either with or without par value. Mr. Ballantine states that until the Constitution is amended these two varieties of shares cannot be combined.

It Is not Proper to Set Forth in the Articles the Amount of "Stated Capital." The confusing and ambiguous term "capital stock" is eliminated. It is no longer necessary or proper to set forth in the articles the amount of "stated capital" with which non par stock corporations will begin to carry on business, owing to the elimination of these provisions from section 290b.

Improper Distinctions between Classes of Shares. Until the Constitution is amended no distinction may be made between classes of shares—

1. As to voting rights (for directors), or
2. As to proportional liability of the shareholders to creditors, or
3. As to par value.

The omission of these prohibitions from section 290 of the Code should not be taken to mean that these distinctions are no longer prohibited. (Del Monte Light & Power Co. v. Jordan, 196 Cal. 488; Film Producers v. Jordan, 171 Cal. 664; 13 Cal. Law Review 483n.)

As to the classes of shares the articles must state all—

1. Preferences,
2. Participation rights,
3. Amounts payable on redemption of shares,
4. Amounts payable on shares of any class upon dissolution, consolidation, merger or sale of entire assets of corporation,
5. Any other distinctions of preferential rights or restrictions as between the holders of shares of different classes.

Providing for Preferred Shares.

The draftsman in providing for preferred shares should consider the following points among others:

1. Whether the dividend is to be cumulative or non-cumulative;
2. Whether the dividend is to be preferential only for a term of years or permanently;

**I wish to acknowledge the assistance of Messrs, Edward H. Gaylord and Frank B. Yoakum in the statement of these points. However mine is the responsibility for errors.* CALIFORNIA CORPORATION AMENDMENTS *(1929), by Henry Winthrop Ballantine, frequently has been consulted.—R. L. O.*

** EDITOR'S NOTE: *This article continues the series, by representative writers, covering important amendments to California laws enacted at the last session of the Legislature. The series is designed to give the readers of the* BULLETIN *the benefit of special research pertaining to the amendments.*

3. Whether the rights in regard to dividends are to be limited to a fixed percent or whether there is also to be a right to participate in surplus profits, that is, ascertaining a dividend at a specified rate on common shares;

4. Whether the preferred shares are to have any preference as regards return of capital upon dissolution or other winding up;

5. Whether arrears of dividends on the preferred shares are to have any claim or priority in a winding up;

6. Whether the rights given the preferred shares are to be subject to alteration or amendment of the articles;

7. Whether the corporation is to be at liberty to issue bonds or preferred shares taking priority over the original preferred shares.

Preliminary Subscriptions. There is no requirement as to ordinary corporations that any amount of the shares shall be subscribed or any amount of capital paid in as a condition of the right to exist or begin business. Any requirement as to a minimum amount to be paid in before the corporation can begin business is to be found under the Corporate Securities Act and the impounding conditions imposed in the permit to sell securities (See Rules of Practice before the State Corporation Department, rule 6), or as to special classes of corporations such as Industrial Loan Companies under California Statutes 1917, chapter 522, page 658, Banks and Insurance Companies.

Incorporators or Directors not Required to be Subscribers or Shareholders. There is no requirement that either the incorporators or directors shall be subscribers or shareholders.

First Directors. The only incorporators who are required to execute the articles are at least three directors to be appointed in the articles. (Civ. Code sec. 292.)

Incorporating Directors Need not Now be Residents, Citizens or Shareholders. Civ. Code secs. 285, 305. The first directors are no longer appointed "for the first year," but until the first annual meeting of shareholders, or until the selection and qualification of their successors. Such selection may be at special meeting before or after the first annual meeting. (Civ. Code sec. 305.)

Restrictions on Membership or Transfer —Optional Provisions. The articles may contain provisions describing "special qualifications of persons who may be shareholders." This allows a creation of a closed corporation in which only approved persons of a certain class or description may become shareholders, or from which persons of certain classes may be excluded. The articles may thus impose restrictions on the right to subscribe or acquire shares by transfer.

The articles may contain provisions "restricting the right to transfer or hypothecate shares." (Civ. Code sec. 290-8a.) These restrictions might be of various kinds, such as:

1. Making transfers subject to a preemptive or optional right in the shareholders to purchase the shares, or

2. Making the transfer of shares subject to the approval of the shareholders or directors, or

3. Making the transfer of shares subject to a limitation as to the class of persons to whom transfer might be made. (Ballantine, California Corporation Amendments, p. 7.)

To provide that no transfer shall be made unless the shares shall first be offered to the corporation would be invalid (Mancini v. Setaro, 59 Cal. App. 748), unless the purchase by the corporation came within the special cases in which a corporation may purchase its own shares. The special cases above referred to are set forth in Civil Code section 354 as follows:

"354. Every corporation, as such, has power:* * *

"8. To purchase * * * any of its outstanding shares as follows:

"(a) To collect or compromise in good faith a debt, claim or controversy with any shareholder;

"(b) From surplus available for cash dividends when authorized by vote or written consent of the holders of two thirds of each class of shares outstanding exclusive of the shares to be purchased;

"(c) From one who as an employee has purchased such shares from the corporation under an agreement giving the corporation the right to repurchase;

"(d) To eliminate fractional shares;

"(e) To carry out provisions of its articles or amended articles of incorporation authorizing the redemption of such shares; * * *"

Assessments, Authorization of. By Civil Code section 331, as amended, shares are not assessable beyond the par value or the consideration agreed to be paid unless the articles expressly confer such authority

upon the directors. With certain exceptions Mr. Ballantine asserts that this provision applies to existing corporations as well as to those created subsequent to the amendment of Civil Code section 331. The exception is that specifically set out in subdivision 3 of Civil Code section 331, which excepts mutual water companies and other water companies which are not public utilities. "Assessments" here refers not to "calls," but to assessments in addition to the amount of consideration agreed to be paid. Authority to assess may be granted in the articles as to common or participating shares and denied as to preferred or non-participating shares, and may be restricted as to amount or in any other way.

The absence of affirmative provision giving the directors the power to levy assessments has the effect of making fully paid shares non-assessable.

Existing corporations desiring the power of assessment must amend their articles to provide for it.

The application of the general power of assessment is in line with the policy of the law in establishing limited liability on the part of shareholders.

Denying or Limiting Preemptive Right to Subscribe. Although Civil Code section 354, subdivision 8 (c), makes it optional to deny to shareholders the preemptive right to subscribe to any or all issues of shares, or to place limitations upon such shares, nevertheless it must be understood that even if preemptive rights be waived, as by a provision that the shareholder is not entitled to subscribe for any new or additional issue or shares, it would be a violation of the rights of holders of common and participating shares for the directors to issue additional shares of any class unless within a reasonable range of the best price which the directors believe to be obtainable. It is doubtful in many jurisdictions whether or not the rule giving shareholders a right to a first offering of a new issue of shares extends only to newly authorized or increased shares or also to a new issue of previously authorized shares. There are several very good law review articles and a book on this subject: Morawetz, The Preemptive Right of Shareholders, 42 Harvard Law Review, 186; Frey, Shareholder's Preemptive Rights, 38 Yale Law Journal, 563; Berle, Studies in the Law of Corporation Finance, 89, 144. See also an article by Berle in 36 Yale Journal, 649, 656, 659.

No provision in the articles can relieve the directors from the obligation to exercise the utmost good faith and fairness in the issue of shares (First Mortgage Bond Homestead Ass'n v. Baker, 145 Atl. (Md.) 876, 881).

Even if a waiver provision as to preemptive rights be included in the articles, it may still be advisable for the directors in connection with the issue of shares to make an offering to the existing shareholders, both as a matter of financial policy and to avoid any question as to whether there is any abuse of discretion or bad faith either in fixing the price of the shares or in the manipulation of voting control.

Under the terms of Civil Code section 290b, directors in the issue of shares without par value must exercise "due regard to the interests of existing shareholders."

Ballantine, Corporation Amendments, 1929, page 10, states:

"The Commissioner of Corporations may impose a condition in the permit for the sale or issue of shares by a going concern that the shares authorized to be sold shall be first offered to the present shareholders in the proportion that the number of shares held by each shareholder bears to the whole number of shares issued and outstanding. The propriety of such a condition would not necessarily be affected by a waiver of the preemption right in the articles."

Mr. Ballantine does not cite any authority for the above statement.

Tabulation of Various Matters which May be Regulated by Provision in the Articles:

1. Prescribing special qualifications of persons who may be shareholders (Civ. Code sec. 290-8-a), or

2. Restricting the right to transfer or hypothecate shares (Civ. Code sec. 290-8-a).

3. Granting or denying to the directors the power to levy assessments upon the shares or any class thereof (Civ. Code. sec. 290-8-b), or

4. Restricting such power (Civ. Code sec. 290-8-b).

5. Denying to shareholders preemptive rights to subscribe to any or all issues of shares (Civ. Code sec. 290-8-c), or

6. Denying or placing limitations upon such rights (Civ. Code sec. 290-8-c).

7. Issuing shares without par value, by a corporation having shares without par value, for such amount of consideration as may be determined from time to time by the board

of directors with due regard to the interests of existing shareholders, such shares to be deemed fully paid when such consideration has been received by the corporation (Civ. Code sec. 290b).

8. Fixing the amount of consideration for shares of stock without par value may be reserved in the articles by the shareholders to the shareholders themselves; the consideration for these shares without par value is to be determined from time to time (Civ. Code sec. 290b).

9. Fixing of qualifications of the directors with reference to being shareholders—directors need not be shareholders unless the articles of incorporation or by-laws so require. (Civ. Code sec. 305; compare section 303 and section 304, Civ. Code.)

10. The term of office of the directors may be fixed "at not more than two years" by the provisions of the articles or by-laws; otherwise they are to be elected annually (Civ. Code sec. 305).

11. "Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, unless it is otherwise provided in the articles or the by-laws. * * * " (Civ. Code sec. 305).

12. A greater number than a majority of the directors present at a meeting at which a quorum is present, may be required by the Civil Code, *the articles, or the by-laws,* to constitute an act or decision of the board. A less number than a majority of the prescribed number of directors may be made to constitute a quorum by provision of the *by-laws,* but in no case less than one-third of the total number of directors, nor less than two. (Civ. Code sec. 308.)

13. The *by-laws* may provide for the appointment by the board of directors of an executive committee, and may authorize the board to delegate to such committee any of the powers and authority of the board, except the power to declare dividends and to make any changes in the by-laws. Such committee shall be composed of members of the board and it shall act only in the intervals between meetings of the board and it shall be subject at all times to the control of the board of directors." (Civ. Code sec. 308.)

14. A quorum of members or shareholders of non-profit corporations may be governed by provision in the articles or by-laws. (Civ. Code sec. 312; compare Civ. Code sec. 303, subd. 2. Civ. Code sec. 303, subd. 2 is as follows:

"A corporation may, by its by-laws, when no other provision is specially made, provide for: * * *

"2. The number of stockholders or members constituting a quorum.")

15. Unless the articles or by-laws otherwise provide,the board of directors is now given authority to fix record dates or close the books against transfer, to determine shareholders of record for certain purposes (Civ. Code sec. 312).

16. Restrictions on the place of meeting of the directors may be fixed in the articles or by-laws. Otherwise meetings may be held within or without the State fixed by a quorum of the directors (Civ. Code sec. 319). Similarly, Civ. Code sec. 303, subd. 1, provides as follows:

"A corporation may, by its by-laws, where no other provision is specially made, provide for:

"1. The time, place, and the manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors."

17. Authorization may be given for holding meetings of shareholders or members at other places than the principal office, either within or without the State by designation in the articles or by-laws (Civ. Code sec. 319).

18. The voting power, property rights and interests of members of certain non-profit corporations (religious associations, societies, clubs, other organizations not for profit), may be fixed by the articles; unless otherwise provided, the voting power, etc., of members shall be equal. (Civ. Code sec. 593, subd. 5; Civ. Code sec. 359; Civ. Code sec. 307; Civ. Code sec. 599, subd. 4.)

19. A corporation without shares of stock may authorize, by its articles of incorporation, its board of directors to create a bonded indebtedness or increase the same without the consent or approval of its members (Civ. Code sec. 359).

20. Such majority larger than the vote or written assent of the holders of two-thirds of the issued and outstanding shares of each class of stock as the articles of incorporation or any amendments thereto may require, may properly be required by the articles of incorporation to authorize an increase in the aggregate par value of the shares of the corporation or any change in the preferences, rights, privileges, or restrictions of any class of issued and outstanding shares (Civ. Code sec. 362).

(Continued on Page 121)

The Practicing Lawyer and Taxation

By MELVIN D. WILSON *of the Los Angeles Bar.**

A questionnaire recently sent out by the United States Chamber of Commerce indicates that the business men of the country consider the tax burden as one of the problems of first consideration.

It now seems clear that some knowledge of the law of taxation is an essential part of the lawyer's equipment, if he is to take an active and important part in general practice.

This paper will not concern itself with any specific tax problem, but with the broader subject of the lawyer and his relation to State and Federal taxation.

While tax cases are usually very difficult, they are probably not more so than other types of hotly contested controversies. A great many lawyers have paid but little attention to tax matters, feeling that they are for the specialist. However, there is nothing sacrosanct about tax laws or tax tribunals. Any sound lawyer who will take the time and make the effort to study the successive tax laws, decisions and tribunals, and who will prepare the facts and the law of his particular case to the very best of his ability, can handle a tax matter in a satisfactory manner.

In handling a tax case, a lawyer will run into a number of matters which it might be well to discuss here.

Knowledge of Bureau

Lawyers who have always dealt with courts may have difficulty for a time, in adjusting themselves to the view point of the Bureau of Internal Revenue.

The lawyer may find on his second trip to the Bureau that the man who handled his case before, and seemed favorably impressed with its merits, is no longer with the Bureau. He may be practicing for himself or with some large corporation. The man who has the case under consideration, may be a relatively new man in the Bureau, who seems to lack the grasp, the decisiveness and the willingness to take the responsibility of deciding the case, which the more experienced man had. Low government salaries lead to the loss of the experienced men.

The lawyer is oftentimes impatient at the delay in closing his case. He may not realize the extreme complexity of the tax law, covering as it does, every phase of human activity. If his case is a fact case, it may involve a valuation of anything from a share of stock to the vast properties of a gigantic oil company. It takes time to impress the facts of his case upon the minds of the Bureau representative. The government engineers or appraisers probably know the average value of the type of assets involved, and it is extremely difficult for the lawyer to convince the Bureau that his case is an exception to the general rule.

If the lawyer has a law case, he may run the gauntlet of precedents. If the theory he is contending for is sound but would result in upsetting established principles used in settling hundreds of other cases, he will probably meet with disappointment in the Bureau.

The moral standards of the Bureau representatives and of the Treasury Bar in general will have a bearing on his case. Most of the men in the Bureau are entirely honest. Some few have been found wanting. The great majority of the lawyers, accountants and tax agents practicing before the Treasury Department are ethical and honest. A number of men and women have been found, however, who did not hesitate to use sharp practices. These few delinquents have put the Bureau representatives on guard, with the result that the honest practitioners have a harder time to prove their allegations than otherwise would have been the case.

Taxpayers have somehow inherited the idea that things in Washington go by influence. This may be true in some matters, but it is not true of the administration of the income tax law. Bureau representatives are quick to resent any influence, other than law and facts, brought into any case. The intervention of anyone who is supposed to have influence, into a case, causes the Bureau to wonder what is wrong with that case that it needs political pressure to secure its objectives. Every auditor, engineer, conferee, attorney who handles the case, takes the greatest precaution to allow nothing that anyone could possibly criticize him about.

* *Member of the firm of Miller, Chevalier, Peeler & Wilson.*

They are all afraid of congressional or political investigations.

The lawyer will be astounded to discover that the Bureau not only does not recognize, but absolutely reverses a rule repeatedly laid down by the Supreme Court—that the tax laws are to be strictly construed. The court, in Gould v. Gould, 245 U. S. 151; U. S. v. Merriam, 263 U. S. 179; Smietanka v. First Trust & Savings Bank, 257 U. S. 602; and many other cases, has held that doubtful language is to be construed most strongly in favor of the taxpayer and against the government. The court has also ruled that taxing statutes should not be construed to operate retroactively, unless that intention is clearly expressed in the statute, or the words could have no meaning if construed prospectively only. Schwab v. Doyle, 251 U. S. 529.

The Bureau of Internal Revenue, however, presumes that the law applies to past transactions, and applies to the case under consideration, even though the language is doubtful. This attitude has long been maintained by the Bureau, in the face of frequent decisions of the Supreme Court to the contrary. This condition results in taxes being collected and large refunds being made, which then becomes the subject of congressional investigation and criticism.

The Bureau, of course has the problem of raising revenue, and the conservative course is to impose the tax and reject the taxpayers' contentions. The courts can correct the errors.

For the reasons stated above, it is dangerous to cite a case which seems favorable, until you have ascertained that the Bureau has acquiesced in it. If the Bureau is appealing the case, and you claim that it is in point with your case, your contentions will be denied. When the government is appealing a case in point, it is better to show wherein your case is different from the case being appealed, so that you will not run into that predetermined opposition.

Oftentimes a lawyer will find that the Bureau is on both sides of a question. To support your case, you may be able to find a Bureau ruling favorable to your case, but which was favorable to the government in the case in which the ruling arose.

Rules for Dealing with Bureau

Two or three short rules may be observed in dealing with the Department, which will take into consideration the matter discussed above:

1. To treat the representatives of the Bureau as men who are honestly seeking the right answer to a hard problem.

2. To avoid assuming that any government tax man who seems churlish or intolerant is typical of the organization, and to realize that there are always men who will listen with courtesy and sympathy to a real case, clearly stated, no matter who presents it.

3. To present the detailed facts and the law of the case, fundamentally considered, in written form which will permanently justify the ruling expected, and if possible, on a ground which does not require the upsetting of rules adopted in other cases.

Questions of Law Involved

People generally think that the work of a tax specialist is "narrow." On the contrary, before many years of handling tax matters, the lawyer will find himself making an exhaustive study of nearly all subjects covered by a law school course, and many others. Some of the principal subjects covered in a tax practice are: construction of statutes, constitutional law, statutes of limitation, estates, partnerships, associations, corporations, reorganizations, mergers, consolidations, receiverships, contracts, sales, trusts, real estate, wills, community property, oil and gas leases, gifts. Novel and puzzling questions arise, providing a broad field for original thought.

The lawyer must be careful, in tax cases, or his contention, if allowed in one year, might result in additional tax in a greater amount in some other year. All phases of the question must be considered, and the client fully protected against such contingencies.

Oftentimes, the lawyer must consider, in connection with the tax problem, the anti-trust laws, the blue sky laws, the railroad commission laws.

In Federal taxation, the nine successive laws, starting in 1909, must be studied and considered at times.

Types of Tax Work

The work which the lawyer may be called upon to do may be classified as follows:

1. Legislative.
   a. Assistance in writing good tax laws.
   b. Assistance in preventing poor tax laws from being enacted, by appearing before committees of Congress and Legislature.

2. Executive.
   a. Advice on filing returns to the Bureau.
   b. Preparation of protests against proposed additional taxes.
   c. Holding conferences with Bureau on protests.
   d. Filing and prosecuting claims for refund in the Bureau.
   e. Securing opinions from the Bureau.
3. Judicial.
   a. Filing suits for refunds.
   b. Trying cases before Board or courts.
   c. Getting injunctions or mandamus.
   d. Appealing adverse decisions of Board and lower courts.

In addition to the above, the lawyer must be prepared to give advice on current transactions. An individual or corporation is about to sell some property at a large profit, and wants to know if there is any way that he or it can honestly and lawfully arrange affairs so that a large tax will not accrue. A group of corporations desire to merge, consolidate or reorganize and want to do it without any corporation or stockholder realizing any taxable income. There are certain non-taxable transactions provided for in the laws, and the taxpayer wants his case to be brought under those sections.

State Franchise Tax Law

The new California Bank and Corporation Franchise Tax Law has brought its quota of problems for the lawyer to solve. This tax is virtually an income tax law, and is similar in some respects to the Federal income tax law. The State law applies, however, to income earned only in California, which presents a difficult problem of allocation. The Federal law has certain Constitutional limitations with respect to taxation of income of States and their officers, employees and obligations. The State law is likewise inhibited from taking Federal instrumentalities, such as Federal obligations, patents and the like.

Emphasis

Tax controversies, like all others, have to be decided by human beings. Nearly everyone wants to decide problems in a reasonable manner, giving a result which is harmonious with the general plan of the statute and just and equitable to the taxpayer.

While tax cases cannot be settled on equitable grounds, as distinguished from legal principles, still no one wants to construe a law so as to work a grave hardship on anyone, particularly, a tax payer who receives no quid pro quo or direct return from the tax money paid out.

It is therefore well to bear in mind a practical truth brought out by a judge of long experience who, when asked what he thought was the principal difference between an able young man just out of law school, and the same after twenty years of experience, said:

> "The young man puts almost all his thought and emphasis on the rules of law which seem to be involved; the experienced lawyer while giving attention to the question of law, takes especial pains to bring out clearly that it is just and reasonable for his client to succeed—the considerations which tend to make the judge want to decide for the client."

Ignorance as a Factor in Criminal Law Enforcement

By W. H. ANDERSON *of the Los Angeles Bar; Chairman of Constitutional Rights Committee, Los Angeles Bar Association.*

This is an era of problems.

It is particularly an era of problems in our country.

That this is so is not due to any ordinary, natural causes which can be promptly met and cured by ordinary, natural and familiar remedies. It is due to the most radical and revolutionary changes (which have come about during the lives of many of us not yet over old) in habitat, transportation, mode of living, popular thought, ideas and ideals (or lack of them), that have ever been known in the history of the race.

A rural, slow-moving, scattered and comparatively sparse population, with families living their own lives in a quiet, neighborly, social way, interested in each other's and the community's and the country's every day affairs, and taking genuine thought for the general good and sparing time to do it, has been completely transformed, almost over night as the history of a nation is measured, into a vast, self-centered, selfish, hurrying horde, dwelling chiefly in enormous cities that have sprung up like mushrooms in the most unexpected manner, living artificial lives, thinking artificial thoughts, seeking artificial pleasures, hungrily looking for new and artificial sensations, rapidly losing all sense of neighborliness, taking little or no or only spasmodic interest in civic matters or governmental affairs, burdened with innumerable unnecessary laws enacted by ignorant zealots or political self-seekers, absorbed in getting something or going somewhere, with a confused uncertainty as to what or where (if the subject is given any thought at all), loosed from all anchors of tradition, having no real precedents to guide them in these new methods of living or along these new lines of endeavor, and floundering in the stage of ignorant experiment.

This is not an overdrawn or pessimistic picture. It is the strange and simple truth; yet even it has received or is given only the scantest of consideration.

Therefore this is an era of problems.

One that has recently received not a little of the writer's consideration is the growing tendency of our police and law-enforcement officers to place themselves above the law and constantly to violate it under an assumption of the right to do so—a situation that is no doubt largely due to the ignorance engendered by the muddled mess of sudden new conditions.

The Constitutional Rights Committee of our Bar Association has been functioning but a few months. When it was created, all of those connected with its creation felt—in fact knew—that there was an existent and growing disregard by certain of the police and certain of our law-enforcement officers of those rights conferred by our Constitution and our laws upon every person. We felt (and hoped) that this was more of an exception than a rule, more spasmodic than general, and that it had no widespread, if any, sanction from those in control of our police departments and of our law-enforcement agencies. In fact at the very outset we were assured by most of those in authority that any such violations of the law, if any existed, were deeply deplored, and that our Committee would be given every possible official aid in its endeavor to ferret out and suppress any such.

This seemed most encouraging; and our Committee entered upon its work with the assumption that its chief hope for local success at least lay in friendly co-operation with the Police Department of Los Angeles primarily, and then with other law-enforcement officials.

Our expectations of any very direct or definite results from such co-operation have been largely disappointed, for reasons which the writer has somewhat elaborated elsewhere; but prime among those reasons, and one that has not been discussed at length, is one that I am convinced is the most difficult to reach and overcome; viz., the fact that our minds and the minds of many of those charged with the difficult problems of law-enforcement do not meet upon the issues involved; or, in the apt phraseology of the Chief of Police of Los Angeles, "apparently we do not speak the same language."

Let me pause in passing to say that this

is not true of the District Attorney of this county; for apparently in this respect he and we do speak the same language and with much the same degree of emphasis. Such, at least up to date, has been our experience in our few, but important, contacts with his office.

This brings me to the particular problem that I have in mind in writing this article: Why do many men who are charged by law with law-enforcement and men, like the members of our Committee, whose sole interest in the matter is to see that the law is legally enforced, approach the question from an utterly different point of view?

This is puzzling, but I believe is, at least, answerable in part.

I am becoming more and more convinced that it is to a great degree answered by the fact that many, if not most, of the law-enforcers are fundamentally ignorant of the laws which they so constantly ignore and violate; and that while this is true in a greater degree of the rank and file of the police themselves, it is also true to a surprising degree of the heads of the law-enforcement departments.

I am reasonably sure that this is due to the careless assumption and conduct of public offices by men unfitted, either by education or experience, for the duties of such offices, and a consequent careless neglect (rather, I hope, than a fundamental inability) properly to qualify themselves for the performance of their public duties. This, of course, is not confined solely to the law-enforcement branches of the government. Manifestly it is a general ill of the body politic. We have no educated or trained governing class. Hence we are necessarily governed by the hodge-podge Toms, Dicks and Harrys who seek and obtain public office.

With the police, however, this general fault is accentuated by a profound belief on the part of many of them that they are the law. In the honest ignorance of the limitations properly placed by our constitutions and laws upon their activities they believe (and the belief is wide-spread and deep-seated) that a police badge is the supreme emblem of authority; that when it is "flashed" by a policeman in the supposed line of his duty everything must at once give way before it, and that the policeman who carries it, *ipso facto* becomes the supreme law of the land for all purposes. Until this belief is dislodged, the policeman will continue to consider himself an autocrat, superior to and above all law, or, as I have said, the very embodiment of the law itself.

That this is the general attitude of the police to the public no one who has come into close contact with them in the every day performance of their duties can doubt. Most drivers of automobiles have become familiar with it, but usually, though not always, in its milder form. Many a householder has had his house invaded without an iota of authority merely on the supposed official warrant of a burly policeman's badge.

An amusing and instructive instance of this type of ignorant invasion occurred recently and is found in our local police annals. Two or three police officers (they usually hunt in packs) attempted to force their way without a search warrant into a private home. Being remonstrated with by the owner, they assured him, and doubtless in the best of good faith, that they were looking for liquor and did not need a warrant, adding that if he did not believe them he could ask the regular officer on that beat. Doubtless being friendly with the local guardian of the peace, or, at all events, believing him to be familiar with the legal rights of his fellows, this householder adopted this suggestion. The local officer was called and (again, no doubt, in the best of good faith) assured the home owner that, of course, no search warrant was necessary if his brother officers desired to enter the house and search it, because, being police officers, they had a perfect right to search when and where they in their judgment thought necessary.

At first blush it would seem incredible that any American citizen of sufficient intelligence to be entrusted with the performance of any kind of public duty should be so crassly ignorant of the very A B C of our constitutional rights; for nothing is more firmly embedded in the doctrines of the English speaking peoples than that a man's home is his castle, free from unlawful invasion by any one under any pretext.

However, police raids and searches without warrant or authority of law are of so frequent and common occurrence as to have become a mere matter of course in the mind of the average law enforcer, and he is naturally filled with indignation and resentful astonishment when his right thus to run riot over the law is questioned.

Such ignorance, gross as it is, might be excused in an ordinary policeman, particularly as his ignorant acts of lawlessness in law enforcement are usually condoned, if not encouraged, by his superiors; and there might be some hope of correcting this evil by a proper system of police schooling—a consummation devoutly to be wished, and one that we hope may some time be brought about.

But where is the blame and what is the remedy, when we sometimes find precisely the same type of official ignorance in the very head and front of our police system—in the Police Commission itself?

Under the recent administration the following occurred at a meeting of the Police Commission:

"Com'r. Thorpe: (re: Burriel case) 'I wish to say that I think such action as that on the part of officers is outrageous and damnable after they were told it was the wrong number. I think action should be taken.'

"Com'r. Pierce: 'I talked with the man here and his attitude was entirely different from the attitude of that letter. The inspector went out to see him and he talked entirely different from the letter.'

"Inspector Longuevan: 'He did not appear to have any malice.'

"Com'r. Thorpe: 'I think some attorney got hold of him.'

"Com'r. Thorpe to Pierce: 'Wouldn't you bring suit under like conditions? Do you think it right to condone it?'

"Com'r. Pierce: 'In that particular locality you don't go wrong if you search every other house for liquor.'

"Com'r. Thorpe: 'The daughter suffered in the loss of a child. That could not be verified in court.'

"Someone said: (thought to be Pierce) 'These things happen to people who never see police officers.'

"Com'r. Thorpe: 'Will you countenance officers going in without any warrant and doing what they did?'

"Com'r. Pierce: 'If you make a motion that our vice squad be instructed to enter no house or no place of business without a search warrant to obtain evidence of liquor, I will second it, and you will have the women's clubs, etc., on your neck.'

"Com'r. Thorpe: 'All right, I move that the Chief be instructed to order the vice squad that no officers when in search of liquor be permitted to enter the premises of any person without a search warrant in the future'."

Commissioner Pierce seconded the motion, and it was carried.

Just here let me say that I cannot concur in Mr. Commissioner Pierce's somewhat low estimate of "the women's clubs"; for I am sure that not one of those most worthy and intelligent institutions would for a moment condemn any action which merely tended to bring about the legal enforcement of the law, and which merely prohibited police officers, in enforcing the law, from themselves committing crimes. Any thought of women's clubs taking a position contrary to this is unthinkable.

The "Burriel case" is thus described: "Entry by 3 colored officers, April 28th, 3:30 p. m. in his grocery store at 3241 Brooklyn Ave.—Sheffield, Washington and Dunn. They had 2 numbers on a sheet, 3257½ and 3259—Burriel's number was 3241. Burriel had a garage, living-room and store combined. Sheffield and another officer came through the front and the third officer came through the rear. Sheffield showed the numbers and Burriel said: 'You go and look at the number and you will find you are in the wrong place.' Sheffield answered: 'I don't have to look at the number —I'm going to search you anyhow' (he had no search warrant); and gave the other officers orders to search the house. They brushed by the daughter who didn't know what they were after, and thought from the conversation that Sheffield might hit her father; it frightened her and being in a highly nervous condition because of impending child birth, although the officers were not rough nor impolite to her, it caused a premature delivery and the child only lived a few hours."

A few days after the passage of the resolution in question a certain Dr. Montgomery, formerly a Police Commissioner, and seemingly consecrated to the cause of prohibition, appeared before the Police Commission, harangued that board at length, and stated among other things "that their action in requiring police officers in search of liquor to secure a search warrant was a wrong step, a backward step, in law enforcement," and characterized their action as the enactment of an "ordinance" (sic), in violation of the laws of this state, in that "it limits your men and keeps them from doing the thing your state law allows them to do."

Then spoke Commissioner Pierce (with whom I have no personal acquaintance) as follows: "We have one Commissioner here who is very self-righteous — never made a mistake in his life—every opportunity he has to tear down the department he does it. This particular day he made it his business to jump on the department. In that particular block you go into nine places and eight will have booze. This one didn't. He immediately started picking on the department to get his name in the front page of the paper. I said if he had nerve enough to make the motion I would second it. I'm willing to admit it. That's one time he made a mistake in his life and the first time the radio picked on him and it did us good to see someone else blasted."

The Commission after this colloquy postponed its consideration of a possible repealing of this resolution (Dr. Montgomery having requested such); referred the matter to the City Attorney for an opinion (evidently being wholly ignorant of this simplest requirement of our constitutional bill of rights); and, of course, in due time, was very properly advised by the City Attorney that the adoption of the resolution in question was entirely within their rights and was merely in consonance with the provisions of Section 19 of Article I of the Constitution of this State, which is identical in its phraseology with the fourth amendment to the Constitution of the United States.

As chairman of our Constitutional Rights Committee, and acting under instructions from that Committee, I wrote the Police Commission, congratulating them upon taking this forward step in the matter of proper legal law enforcement, and suggesting that our only criticism of their resolution was that it was too limited in its scope and that it should be broadened to embrace the inhibition of any and all searches of private premises for any purpose without a warrant therefor having been first obtained.

Later, the learned doctor-advocate of the repeal of this resolution having questioned the opinion of the City Attorney and the law as stated by the City Attorney, and as stated in the letter written at the instance of our Committee, the matter was postponed by the Police Commission for further consideration; and finally, after much disputation, a proper new resolution prepared by the City Attorney, but covering *liquor law raids* only, was adopted.

I am citing this rather extraordinary example of general ignorance of the simplest of our Constitutional rights by some of these high officials merely as illustrative of my belief that, after all, criminal law enforcement methods, in their milder and more frequently occurring forms at least, are probably more the result of ignorance on the part of law enforcers than of any real intent on their part to violate the law themselves.

It is my personal belief that the remedy (perhaps there never will be a complete cure) for this lies largely in the adoption of some method of teaching the law enforcers just what their duties are in this behalf, and just what limitations our constitutions and our laws place upon them for the protection of the private citizen. The adoption of some such system has already been tentatively suggested by members of our Committee, and some thought has been given to the possible establishment of a series of lectures to police squads on this subject.

Perhaps a better and more direct mode of instructing the police in these particulars would be the adoption by the Police Commission of a set of rules and regulations embodying the substance of the constitutional and legal inhibitions, of which the police are now so obviously ignorant; for while the average policeman might take only the most cursory interest in any attempted general instruction on such subjects, he would be prompt to learn and assiduous to obey any of these laws of the land which came to him in the guise of police regulations.

Since the foregoing was written, the present Police Commission has given the latter proposition active consideration and is now co-operating with our Committee in the preparation of a police manual embodying, among other things, proper instructions to the police concerning their duties and the Constitutional and legal limitations upon their activities. Moreover, that Commission has also given and is giving serious consideration to the re-establishment of a police school along the lines of the police school which was established by former Chief of Police Vollmar and which operated during a portion of his term of office.

It is the belief, and certainly the hope, of our Committee that our very active and

(Continued on Page 121)

Inheritance Tax Table

(The table set out below is supplied by Title Insurance and Trust Company, the material having been prepared by Mr. Theo.A. Simpson, who is Assistant Trust Officer in charge of the Testamentary Living Trust Division.)

Under California's Inheritance Tax Act a tax is imposed upon the transfer of money or property, real or personal, or of any interest therein, or of the income therefrom. The tax is computed, as of the date of death, upon the amount of money or market value of the property or interest transferred, as fixed by the inheritance tax appraiser, subject to final determination by the court.

This tax is charged against the person receiving the money, property or interest or income, and must be paid by such person before he can receive the same, unless the will or trust instructs the executor or trustee to pay it out of the general estate.

Certain deductions are allowed in determining the net value of the taxable estate, such as: debts of decedent at time of death; expenses of funeral and last illness; Federal estate, State, county and municipal taxes; executor's or administrator's fees and attorney's fees.

Life and accident insurance payable to the insured or to the estate, or to the executor or administrator of the insured is taxable.

War risk insurance payable to the estate of the veteran is exempt.

Life and accident insurance payable to a named beneficiary or to a trustee is exempt.

Property transferred to corporations which are exempt from taxation, or to charitable organizations in Califonia, or to a trustee for such purpose, is exempt.

The persons receiving such properties are entitled to exemptions grouped as follows:

Group A—$50,000.00 to the widow (in addition to her community interest exemption).

Group B.—$24,000.00 to an adopted or mutually acknowledged or natural born minor child.

Group C—$10,000.00 to a husband, adopted or mutually acknowledged or natural born adult child, parent, grandparent or grandchild.

Group D—$5,000.00 to a brother, sister, nephew, niece, son-in-law or daughter-in-law.

Group E—$1,000.00 to an uncle or aunt, or descendant of either (cousin).

Group F—$500.00 to any distant relative not in the foregoing groups, or to a stranger in blood, or a corporation which is not exempt.

The rates of taxation increase as the degree of relationship becomes more distant and vary from 1% to 12%, which is illustrated by the following table, compiled with relation to the groups before mentioned:

		Rate and tax on various amounts of inheritance and bequests					
Group	Exemption	First $25,000 less Exemption	$25,000 to $50,000	$50,000 to $100,000	$100,000 to $200,000	$200,000 to $300,000	Over $300,000
A	$50,000.00	No Tax	No Tax	4% $2,000.00	6% $6,000.00	7% $7,000.00	8%
B	$24,000.00	1% $10.00	2% $500.00	4% $2,000.00	7% $7,000.00	$200,000 to $500,000 9% $27,000.00	Over $500,000 10%
C	$10,000.00	1% $150.00	2% $500.00	4% $2,000.00	7% $7,000.00	$200,000 to $500,000 9% $27,000.00	Over $500,000 10%
D	$5,000.00	3% $600.00	6% $1,500.00	9% $4,500.00	12%	All over $100,000.00	
E	$1,000.00	4% $960.00	8% $2,000.00	10% $5,000.00	12%	All over $100,000.00	
F	$500.00	5% $1225.00	10% $2,500.00	12%	All over $50,000.00		

LOS ANGELES BAR ASSOCIATION

Chamber of Commerce Dining Room

Thursday, December 19, 1929

Six O'Clock P.M.

Christmas Fantasy

LAWLESS

SPEECHLESS

MIRTHFUL

TUNEFUL

COLORFUL

Bring or Send

CHRISTMAS GIFTS
SUITABLE FOR THE FUN OF THE OCCASION
FOR YOUR BROTHER LAWYERS

ON THIS OCCASION ONLY, JUDGES
WILL BE CONSIDERED LAWYERS

Guests of members are welcome.
Informal--very. $2.00 per plate.

CAPACITY LIMITED—RESERVE NOW AND BE SURE

Special Committee

?

Comment on Section 73 (g) California Vehicle Act

By GEO. M. GOODELL, *Chief Clerk, Civil Department, Municipal Court, Los Angeles.*

Section 73 (g) of the California Vehicle Act, passed in 1929, provides substantially as follows:

"The operator's or chauffeur's license and all of the registration certificates, of any person, in the event of his failure to satisfy every judgment within fifteen days from the time it shall have become final, rendered against him by a court of competent jurisdiction . . . for damages on account of personal injury, or damages to property in excess of one hundred dollars, resulting from the ownership or operation of a motor vehicle by him, his agent, or any other person with the express or implied consent of the owner, shall be forthwith suspended by the chief of the division of motor vehicles, upon receiving a certified copy of such final judgment. . . . It shall be the duty of the court in which any such judgment is rendered to forward immediately to such chief of the division of motor vehicles a certified copy of such judgment or a transcript thereof."

From a letter of the County Counsel dated August 23, 1929 we quote:

"It is the opinion of this office that the certified copy of the judgment should be sent to the chief of the State vehicle Division immediately upon the expiration of fifteen days after the judgment has become final and remains unsatisfied."

It therefore becomes important to know when a civil judgment in the Municipal Court becomes final. (Note: This law, of course, applies to all courts but the writer has studied as to the Municipal Court only.) The following from the Code of Civil Procedure is pertinent:

"An action is deemed to be pending from the time of its commencement until its final determination on appeal, or until the time for appeal has passed." *(Code Civ. Proc. sec.* 1049.)

"Any party to a civil action in a Municipal Court aggrieved by any final judgment entered therein . . . may appeal therefrom . . . at any time after the rendition of the judgment . . . and within 30 days after notice of the entry of such judgment . . provided, that if proceedings on motion for a new trial are pending, the time for appeal from the judgment shall not expire until 15 days after entry of an order determining such motion for a new trial, or after other termination in the Municipal Court of the proceedings upon such motion." *(Code Civ. Proc. sec.* 983.)

"The party intending to move for a new trial must, either before the entry of the judgment or within 10 days after receiving written notice of the entry of judgment, file with the clerk and serve upon the adverse party a notice of intention to move for a new trial." *(Code Civ. Proc. sec.* 659.)

"The power of the court to pass on motion for a new trial shall expire 60 days from and after service on the moving party of written notice of entry of judgment, or if such notice has not theretofore been served, then 60 days after filing of the notice of intention to move for a new trial. If such motion is not determined within said 60 days, the effect shall be a denial of the motion without further order of the Court." *(Code Civ. Proc. sec.* 660*).*

"Any notice of entry of judgment, or of order granting or denying a motion for a new trial, required by the provisions of section 650, section 659 or section 953a of this code, must be given in writing, unless written notice thereof be waived in writing or by oral stipulation made in open court and entered in the minutes." *(Code Civ. Proc. sec.* 953d.*)*

It will be noted that section 983 does not require *service of written* notice of entry of judgment to start the 30 day period running. But section 659 does require service of written notice of entry of judgment. Therefore if no notice of intention for new trial is filed, the time for appeal cannot run until after service of written notice of entry of judgment (or proper waiver thereof). However, notice of intention to move for a new trial may be filed even before entry of judgment, and the motion for new trial might be determined without notice of entry

of judgment being given. The question then would be, does time for appeal expire 15 days after determination of motion for new trial, or not until 30 days after notice of entry of judgment? With no decision on this point we shall assume that whichever date is latest will govern.

We may formulate the following:

If notice of entry of judgment be not served and notice of intention to move for a new trial be not filed, the judgment will never become final.

If notice of entry of judgment be served and notice of intention to move for a new trial be not filed, the judgment becomes final on the 31st day after the notice is served.

If notice of entry of judgment be or be not served and notice of intention be filed, the judgment becomes final on whichever is latest, the 16th day after the order determining the new trial is entered or the 31st day after notice of entry of judgment.

If an appeal is taken the judgment becomes final on the filing of the remittitur affirming the judgment.

The following is from the Chief of Division of Motor Vehicles under date of October 2, 1929:

"The Division must receive certified copies of judgments rendered on all cases entered after August 14, 1929, even though the accident occurred before that date.

"A judgment rendered for less than $100.00, where the cost brings the total judgment to more than $100.00 does not have to be reported to the Division.

"The Division will expect the name of the judgment debtor, his address, license number, and all other identifying information it is possible for the Court to furnish."

The clerk of the Municipal Court in Los Angeles will appreciate the co-operation of attorneys who secure auto-damage judgments which are not paid promptly, in

1. Serving written notice of the entry of judgment so there will be no question as to when judgment becomes final.
2. Furnishing the clerk with the information wanted by the Division of Motor Vehicles.

Compensation of Attorneys-at-Law—The Lawyer's Learning

By FRANK G. TYRRELL *of the Los Angeles Bar.*

Before any consideration of the ordinary elements entering into the question of what is a reasonable fee, such as the time and labor required, the amount involved, the intricacy of questions raised, etc., it is proper for both lawyer and client to remember the initial costs incurred by the lawyer to equip and qualify him to render the service. Presumably, in these days of popular education of all classes, there is the long period of pre-legal education, followed by the specifically legal studies,—a costly period of study, requiring no small investment of capital. But that is only the beginning. The knowledge thus acquired must perforce be continually increased, checked and brought down to date by sustained and assiduous study.

The various courts and administrative bodies, their jurisdiction and rules of procedure, form a necessary part of the lawyer's learning. And new tribunals are constantly being created. The competent attorney must be able to choose the proper forum, and know how to present his cause therein. First, however, he must decide whether there exists a cause of action, or not. The statutes, their construction and application by the courts, he must know, and even if he is "letter perfect" here today, the last session of the Legislature, State or national, may have repealed his laboriously acquired learning.

The adjudicated law forms another and rapidly increasing volume of study. Changes in the codes have rendered much of this inapplicable today, so that one cannot rely upon the most carefully prepared brief without thorough revision. The latest statutes and decisions must always be examined, together with those of the past, so that the practitioner may safely conclude what the law now is. There is in the honorary designation of "judge," sometimes addressed to lawyers who never wore the ermine, an expression of a necessary function performed daily by the careful practitioner; he is a judge of both fact and law, before he becomes advocate.

That feature of the law which is of fundamental significance and value to the business community, its adaptability to new and changing economic factors and conditions, lays upon courts and lawyers a heavy burden. As Chief Justice Green of Rhode Island described it in an early case, (1 R.I. 356),

> "The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. But this progress must be by analogy to what is already settled."

It cannot be determined what the law now is, without knowledge of what it has been, and here alone the lawyer's learning must be almost encyclopedic, and his industry in research tireless and unlimited.

Still another field of knowledge is not only open to the lawyer who would be well equipped, but it forms a most important part of his necessary learning—psychology. He must know humanity. How will a given witness or juror respond and re-act in court during the progress of the trial? If convinced that an important witness is untruthful, how will he expose him on cross-examination? These considerations bring before us the whole subject of trial tactics, in which the lawyer must strive to become adept.

The most important function of government is to secure as near as may be, equal justice between man and man, between man and society, and in this function the lawyer is the principal agent. Not the court or the jury, but the lawyer stands at the portals of the temple of justice, deciding who shall and who shall not enter, and he accompanies the petitioner to its altars, and there officiates as the minister of justice. This task involves responsibilities to the State that must forever establish the practice of law as a profession, not a craft or trade, or a mere means of livelihood.

Now, when attorney and client are negotiating, how much should be charged by the attorney? How much should the client be willing to pay? Both should reflect that no man can serve efficiently, in the multiform tasks of the lawyer, if he is worried over

the problems of subsistence. Pecuniary compensation adequate to the work performed is a good investment for the client and a necessity to the lawyer. The self-respecting attorney will not condescend to "dickering," and will make short shrift of clients who "shop" or "peddle" their business. But the situation is one that sometimes requires the lawyer to be for the moment, a patient teacher, educating the client to the ethics and requirements indicated.

FORMING CORPORATIONS UNDER 1929 AMENDMENTS

(Continued from Page 104)

With respect to this situation, Ballantine says:

"The secretary of state has refused to file articles which provide that the articles cannot be amended except by the unanimous consent of the members of the corporation. It may be argued that the policy of sec. 362 as to amendments is only that not less than a majority may amend the articles. But it may be argued, on the other hand, that it is the policy of the law to let the majority govern, except as to changes in the aggregate par value of shares or in the preferences of outstanding shares as to which two-thirds vote or assent is required, or such larger majority as the articles may require. Only as to these changes is permission given to vary the statutory rule." (page 12.)

21. Provisions authorizing the redemption of shares are contemplated by Civil Code section 354-8-e. See Civil Code section 290-5.

22. A corporation may, by its articles, be authorized to purchase, hold and sell shares of stock in other corporations. (Market Street Railroad Company v. Hellman, 109 Cal. 571; Bank Act, sec. 37, Deering, General Laws, Act No. 652, Stats. 1923, page 56.) A corporation can enter into a partnership if so authorized by its articles of incorporation and charter. (Mervyn Investment Co. v. Biber, 184 Cal. 637.)

(To be Continued)

DON'T FORGET YOUR EMPLOYMENT DEPARTMENT

Members who are in need of office assistants are urged to 'phone the office of the Secretary of the Association.

The Association has on file at the present time a goodly number of employment applications of attorneys recently admitted, and a few applications of experienced practitioners. All 'phone calls and other communications will be treated in a confidential manner.

Your co-operation will be appreciated.

J. L. ELKINS,
Acting Secretary.

IGNORANCE IN CRIMINAL LAW ENFORCEMENT

(Continued from Page 113)

earnest efforts to arouse a proper sentiment for legal law enforcement and to curb illegal law enforcement, are bearing some fruit with those who are charged with the duty of enforcing our laws.

Comment—State Bar Legal Ethics Questions and Answers, Nos. 50 and 51

The BULLETIN *is glad to receive from attorneys for publication correspondence on matters of interest to the profession. Letters published, however, are not to be deemed to reflect the views of the* BULLETIN, *or of Los Angeles Bar Association.*

The letter printed below, by Mr. Richard C. Goodspeed to Honorable M. C. Sloss, Chairman of the State Bar Committee on Legal Ethics, concerns Questions and Answers in Legal Ethics, Nos. 50 *and* 51, *which read as follows:*

"QUESTION No. 50

"An individual engages in the business of advertising for the claims of persons who have causes of action arising out of violation of the Usury Law of the State of California. This individual advises, and after securing the claims employs counsel to represent him in the adjustment thereof in those cases only where actions are to be filed. Actions are brought in the name of the individual as assignee. The compensation is paid by the individual to the attorney. Is such conduct professionally proper?

"Answer

"The Committee is of the opinion that it is not professionally improper for an attorney at law to accept the employment mentioned in this question provided that he is not directly or indirectly connected with or interested in the solicitation of these claims.

"QUESTION No. 51

"Would it be proper for an attorney at law to represent individuals whose claims under the Usury Law had been solicited, the action being brought in the name of the aggrieved party, but the solicitor for the business paying the compensation of the attorney?

"Answer

"The Committee is of the opinion that it is not professionally improper for an attorney at law to accept the employment mentioned in this question provided that he is not directly or indirectly connected with or interested in the solicitation of these claims."

"December 5, 1929

"Honorable M. C. Sloss,
"Chairman, Committee on Legal Ethics,
"The State Bar of California,
"1500 Hunter-Dulin Building,
"San Francisco, California.

"My dear Judge:

"Permit me to refer to the answers of the Committee on Legal Ethics of the State Bar of California to questions Nos. 50 and 51, as published in the December, 1929 issue of the *State Bar Journal* and to suggest that those matters be reconsidered. If the answers in question constitute sound applications of our code of ethics, then, of course, it is well to have such matters definitely and promptly determined and declared to the public, and particularly to that part of it which is assiduously endeavoring to devise ways and means to cut in on the legal profession without the necessity of measuring up to its requirements of preparation, character and standards of propriety, so that they may plan their campaigns in such a way as to be immune to prosecution, censure or other discipline.

"These particular questions are directed only at individuals engaged in the 'business of advertising for the claims of persons who have causes of action arising out of violation of the Usury Law of the State of California.' It is a simple matter to devise corresponding questions affecting the 'business of advertising for the claims' of all the various and infinite natures that may arise under our complicated social system, and after those who are engaged in such 'business' have exhausted the possibilities of exploiting the rights and interests of the claimants, it is interesting to all to know how far an attorney may go to assist such operators to function effectively.

"I raise the question: Does not an attorney who co-operates in any way with such an intermediary countenance and lend his aid to the unlawful practice of the law by a lay agency?

"There is no denying that the laws of human nature apply to lawyers as well as to others, and that a man's real loyalty is bound to be the actual source of his present and future income, rather than to the one on whom happens to fall the ultimate burden of the current fee. The true usefulness and ultimate welfare of our profession depend on a most complete and undivided loyalty from attorney directly to his client and anything that tends to divert and divide that loyalty is pregnant with disaster to the client.

"Then again, how are young men entering the legal profession to build up and maintain a dignified and self-respecting and self-supporting position in the community if, after their years of preparation and their acceptance of high ethical standards, we tolerate entirely unqualified and unrestricted laymen stepping in to skim off the cream of any and every sort of legal controversy or demand that may arise, accomplishing this by a free resort to all the methods, tricks and devices that are obvious to any reasonably bright person but which are incompatible to a proper development of the legal profession and to the relationship of attorney and client? If we are going to insist, as we undoubtedly should, on the observance by attorneys of a proper code of ethics, we can avoid disaster only by insisting at the same time that unfair advantage of that fact be not taken by those outside of the profession. The necessary result of any other attitude is either starvation or subterfuge. Your answers to questions Nos. 50 and 51, in my estimation, lead very directly either to one or the other and tend toward both.

"It is true that, by long-established practice, lay agencies for the collection of ordinary debts have become established institutions among us, and, I regret to say, 'licensed casualty claim adjustors' seem to have been recognized by law, though they are an incumbrance on our social system caused to some extent by the failure of the legal profession to devise, (1) a workable method of contact between the attorney and those who need his services (but through ignorance and/or fear fail to avail themselves thereof), (2) deficient and economical methods of office organization whereby controversies of all kinds may be adjusted prior to suit without prohibitive expense. But notwithstanding our own shortcomings, which we should make it our business to correct, I think it is undoubtedly contrary to the interests of public welfare to throw down the bars to the indiscriminate recognition and encouragement of laymen in engaging in the 'business of advertising for the claims of persons who have causes of action' of various sorts for adjustment and that the bar as a whole should unequivocally discontinue and repudiate the conduct of any such business or the maintenance of professional relations or contacts by attorneys with any such intermediary, except such as is duly licensed by the State. Unless we do so, we shall ultimately see every law office affiliated with its own particular lay organization to conduct the 'business of advertising for claims' and then we may as well lay aside our ancient prejudices against soliciting and advertising for business in the same manner as banks have done. We can most of us remember that it was only a few years ago when the suggestion of advertising for business would have been repulsive to any self-respecting banker.

"Yours very truly,

"(Signed) Richard C. Goodspeed."

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*
Assistant United States Attorney

A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION; by Thomas M. Cooley; Eight Ed. by Walter M. Carrington, Two Volumes; ccxxii and 1565 pages; 1927; Little, Brown & Co., Boston.

This is the latest edition of a time-honored treatise.

The surest tribute to the authoritativeness of this memorable work is the fact that numerous editions have been in demand since the early days of 1868, when the then young instructor at the University of Michigan Law School first produced his work. As fine a tribute is the fact that through all these editions, although there have been numerous additions to the footnotes, the text remains substantially intact.

Mr. Carrington of the Maryland bar in writing this latest edition was faced with the difficult task of inserting discussion on recent important constitutional tendencies and developments, without at the same time making extensive changes in the original text. Sometimes this could not be done without alteration of the author's original classification, as appears to be the case in the chapter on "The Police Powers of the States." But the editor has succeeded in some way or other in inserting all the important recent cases with an appropriate discussion of their place in the scheme of things—and after all that is the important thing.

The work now remains as it has been in the past, the leader in this field.

NEW YORK TO BE PROTECTED FROM PERILS OF AIR

Legislation looking toward the protection of the earth-bound against hazards from the air, long predicted as a necessary outgrowth of the development of aviation, is to become a reality in New York, where two unfortunate accidents in one week has stirred the city authorities to action.

On one occasion an aviator, while making a forced landing on the crowded Coney Island beach, caused the death of two persons and the injury of ten others, while a few days later another flyer, skimming the water of Jamaica Bay in a fog, struck a motor boat and caused the death of one of its occupants and the serious injury of the other.

As a result of these occurrences, Mayor Walker has announced that an ordinance is in preparation designed to curb aerial activities above the metropolitan area, with provisions for an air police squad to enforce the law.—*The Ohio Law Bulletin and Reporter.*